



COUNTY OF LOS ANGELES
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Agenda No. 8
01/27/04

FROM: LLOYD W. PELLMAN
County Counsel

RE: **Exemption for Service Dogs**

You asked that our office work with the Department of Animal Care and Control and with the Department of Regional Planning to respond to the following issues relating to whether service dogs should be exempt from the three dogs per residence limit:

1. Review the state and federal statutes to determine if there are any state or federal statutes which would affect local ordinances; and
2. Review ordinances from other cities and counties to determine if the issue has been addressed by other local jurisdictions.

Summary

1. Federal law prohibits public entities from discriminating against a disabled person in violation of the Americans With Disabilities Act ("ADA"). A public entity is required to modify its animal control policies to reasonably accommodate a qualified disabled person who requires the use of a service animal.
2. We have not located another local jurisdiction which has addressed this issue.
3. It is recommended that the County ordinances be amended to exempt service dogs from the three dogs per residence limit.

Analysis of Applicable Law

1. Federal Law

Federal law prohibits a public entity from discriminating against a qualified disabled person under Title II of the Americans with Disability Act (42 U.S.C. § 12132). The Code of Federal Regulations further requires a public entity to make reasonable modifications in policies to avoid discrimination on the basis of disability. [28 C.F.R. §35.130(b)(7)]

"Service Animal" is defined as " . . . any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items (28 C.F.R. § 36.104).

In addition, the Fair Housing Act (42 U.S.C. § 3601 et seq.) may apply where the Los Angeles County Code limit of three dogs per residence is relied upon in refusing to rent or sell a residence to a disabled person, whose service dog puts him or her over the limit.

Based on the foregoing, the County is required to modify its animal control policies to reasonably accommodate a qualified disabled person who requires the use of a service animal.

2. State Law

There is no State law which exempts service dogs from local limitations on the number of dogs permitted to be kept in a private residence, however, there are several State laws which apply to the use of service dogs.

The Civil Code provides that a person who uses a service dog or is training a service dog, may not be denied access to public places and accommodations. Service dogs are required to be on a leash and tagged as such (Civil Code §§ 54.1 and 54.2). The Penal Code provides that a disabled person is entitled to have his or her guide dog on public conveyances and in public accommodations (Penal Code § 365.5).

The Food and Agriculture Code provides that the county clerk or animal control department shall "endorse. . . the number of the identification tag issued." The Code also requires the person who is obtaining a license for a service dog to sign an affidavit stating that they understand the Penal Code prohibition against fraudulently representing himself or herself to be the owner or trainer of a guide dog. The owner or person in possession of the dog is required to return the tag to the department which issued it, upon the death or retirement of the dog (Food and Agriculture Code § 30850). These are reasonable safeguards to ensure that the accommodations for service dogs are not abused.

3. County Ordinances

There is currently no exemption for service dogs from the County Code limit on the number of dogs which may be kept in a residence.

Title 10 of the Los Angeles County Code requires that a dog kennel license be obtained if four or more dogs are kept for any purpose (Los Angeles County Code § 10.08.130). Likewise, Title 22 limits the number of dogs which may be kept in a residence to three dogs (Los Angeles County Code § 22.20.050 and §22.24.050), and requires that an animal permit be obtained to keep more than three dogs (§22.52.330).

Owners of service dogs are required to obtain an annual license for service dogs, but are only required to pay a one-time registration fee (Los Angeles County Code §10.90.010 VI). The owner of a service dog is required to provide proof to the Department that the dog has been trained as a service dog, and is issued a distinctive tag for the dog upon compliance (Los Angeles County Code §10.20.090).

A reasonable accommodation would be to exempt a dog which is currently acting as a service dog to a qualified disabled person, from the three dogs per residence limit.

Recommendation

This office, unless otherwise directed, will work with the Department of Animal Care and Control and with the Regional Planning Department to draft amendments to Title 10 and to Title 22 to exempt service dogs from the three dogs per dwelling limit.

If you have questions concerning this matter, please contact me,
Assistant County Counsel Lawrence B. Launer at (213) 974-1881, or Principal Deputy
County Counsel Diane C. Reagan at (213) 974-1868.

LWP:DCR:dcr

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